

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and Lake Champlain Lifelong Learning Fund (hereafter called the "Subrecipient") that the grant on the subject of enrollment assistance for Vermont Health Connect to individuals and businesses in communities across Vermont, effective July 3, 2013 is hereby amended effective June 6, 2014 as follows:

1. By deleting Section 3 (Maximum Amount) on page 1 of 22 of the base agreement and substituting in lieu thereof the following Section 3:

3. Maximum Amount: In consideration of services to be performed by the Subrecipient, the State agrees to pay the Subrecipient, per payment provisions specified in Attachment B, a sum not to exceed \$126,000.00

2. By deleting Section 5 (Source of Funds) on page 1 of 22 of the base agreement and substituting in lieu thereof the following Section 5:

5. Source of Funds: *GC \$ 64,075.00 Special \$ 0 Federal \$ 61,925.00

3. By deleting Section 6 (Federal Funds Information) on page 1 of 22 of the base agreement and substituting in lieu thereof the following Section 6:

6. Federal Funds Information:

Period of July 3, 2013 – September 30, 2013

CFDA Title: Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchange

CFDA Number: 93.525

Award Name: Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchange

Award Number: 1 HBEIE130147-01-00

Award Year: FFY2013

Federal Granting Agency: HHS/CMS Center for Consumer Information and Insurance Oversight (CCIIO)

Research and Development Grant? Yes ☐ No ☒

Amount: \$ 7,405.00

CFDA Title: Medical Assistance Program

CFDA Number: 93.778

Award Name: Medicaid - Admin and Program

Grant Number: 1205VT5ADM

Award Year: FFY2014

Award Number: VT20133

Federal Granting Agency: HHS/CMS Center for Consumer Information and Insurance Oversight (CCIIO)

**Global Commitment (GC) funding is a blend of State and Federal dollars. The funding split is based on the current Federal Medical Assistance Percentage (FMAP) rate.*

Research and Development Grant? Yes ☐ No ☒
Amount: \$ \$2,595.00

Period of October 1, 2013 – June 30, 2014

CFDA Title: Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchange

CFDA Number: 93.525

Award Name: Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchange

Award Number: 1 HBEIE130147-01-00

Award Year: FFY2013

Federal Granting Agency: HHS/CMS Center for Consumer Information and Insurance Oversight (CCIIO)

Research and Development Grant? Yes ☐ No ☒
Amount: \$ 54,520.00

CFDA Title: Medical Assistance Program

CFDA Number: 93.778

Award Name: Medicaid - Admin and Program

Grant Number: 1205VT5ADM

Award Year: FFY2014

Award Number: VT20133

Federal Granting Agency: HHS/CMS Center for Consumer Information and Insurance Oversight (CCIIO)

Research and Development Grant? Yes ☐ No ☒
Amount: \$ 61,480.00

- 4. By deleting Subrecipient Deliverables (Target Population and Enrollment) on pages 5 of 22, Attachment A (Scope of Work to be Performed) and substituting in lieu thereof the following:**

Subrecipient Deliverables

1. Target Population and Enrollment:
Subrecipient will enroll up to from 28 to 8,125 individuals.
2. Outreach and Education:
Subrecipient will reach 9,375 individuals through outreach and education activities; 4,063 by 10/31/13; 2,812 by 12/31/13; 1,250 by 3/31/13; 1,250 by 6/30/14;

This will be achieved by working in partnership with the Addison County Chamber of Commerce, the Franklin County Chamber of Commerce and the Mad River Valley Chamber of Commerce. Additionally, the LCRCC will provide the same services to its members outside this five-county region and to the members of its statewide affiliate organizations: the Young Professionals Group, the Vermont Convention

Bureau and the Vermont Council on World Affairs. These groups have members in 13 of Vermont's 14 counties.

Subrecipient's outreach efforts will include information available on the web, traditional print media, a video information platform, in-person seminars and trainings and the use of an asynchronous educational platform, Global Classroom.

In addition, the Subrecipient will:

- Provide information on VHC at all LCRCC and collaborating partner events
 - Use LCRCC and partner organizations newsletters, email and social media to distribute information
 - Communicate with businesses using contact lists for those who currently purchase insurance through the Subrecipient's association plan
 - Collaborate with other business associations, rotary clubs and other groups to hold seminars for employers and employees
 - Access a larger cohort of businesses and individuals by using the networks of the Subrecipient's members.
 - Engage local media resources to help spread the word. The LCRCC currently partners with local radio stations to produce weekly segments and with the local cable access provider that could feature information on VHC
3. Between July and September, the Subrecipient will engage a network of potential enrollees by:
- Maintaining a presence at five or more existing events or festivals;
 - Meeting one-on-one with all relevant organizations that serve the designated population that will require enrollment support;
 - Coordinating with overlapping Navigator organizations to avoid duplication of effort;
 - Identifying locations and dates for Vermont Health Connect presentations to the communities they serve; and,
 - Placing existing Vermont Health Connect materials in markets, community centers, faith institutions, and other physical and online venues that their target population frequents.

The Subrecipient shall share detailed plans for the outreach and engagement listed above with State's Navigator Project Director – both verbally and through online tools as directed by the Project Director. The Subrecipient shall adhere to the Project Director's guidance regarding public communication, coordination with other Navigator organizations, and necessary adjustments to outreach and enrollment efforts.

- 5. By deleting the Attachment B (Payment Provisions) on pages 7 of 22 and substituting in lieu thereof the following Attachment B:**

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The State agrees to compensate the Subrecipient for services performed up to the maximum amounts stated below, provided such services are within the scope of the grant and are authorized as provided for under the terms and conditions of this grant. State of Vermont payment terms are Net 00 days from date of invoice; payments against this grant will comply with the State's payment terms. The payment

schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. The Subrecipient shall invoice the State monthly, for actual expenditures to date, in a total annual amount not to exceed the total grant amount of \$120,000 for project management activities, technology, equipment, travel, and any other approved grant expenses incurred and specified in Attachment A. Invoices must be itemized according to the budget categories reflected in the Subrecipient's budget found on page 8 of this document. Payment is contingent upon review and acceptance of deliverables by the State. The Subrecipient shall perform services specified in Attachment A through the full term agreed to in this grant agreement.
2. In addition to the actual expenses, the Subrecipient shall invoice for \$6,000 upon completion of the Outreach and education targets identified in Attachment A for 12/31/2013.
3. The Subrecipient is responsible for holding receipts and documentation on file for all grant expenditures and make documentation available upon request by the State. Mileage expense for use of personal vehicles and meal expense will be reimbursed at the current State rate. All travel expenses must be in compliance with State of Vermont Administrative Bulletin 3.4.
4. By the 15th of each month, the Subrecipient shall submit Monthly Reporting Forms for this grant in electronic format. Reports shall reference this grant number and be sent to:

Kelly Dougherty, Project Director

By the 15th of each month, the Subrecipient shall submit a hard copy of invoices with original signature to:

Emily Trantum, Contracts and Grants Administrator
Department of Vermont Health Access
312 Hurricane Lane Suite 201
Williston, Vermont 05495-2806

5. A final invoice will be due no later than 30 days after the end date of the grant. The final invoice will report actual approved expenditures against payments received within 30 days of the end of the grant.
6. The State reserves the right to withhold part or all of the grant funds if the State does not receive timely documentation of the successful completion of grant deliverables. The State also reserves the right to withhold part or all of the grant funds if the Subrecipient fails to adhere to the Project Director's guidance regarding public communication, coordination with other Navigator organizations, and necessary adjustments to outreach and enrollment efforts.

Grant Budget for 7/1/2013 - 6/30/14		
Category		Total Cost
Project Management		\$ 100,220.00
Navigator	\$ 100,220.00	
Travel		\$ 2,940.00
Mileage Reimbursement @ State rates	\$ 2,940.00	
Administration & Other		\$ 16,840.00
Office Space	\$ 8,840.00	
Marketing	\$ 3,100.00	
Audit/Legal	\$ 800.00	
Copier/Phone/Admin	\$ 4,100.00	
Fixed Outreach and Education Payment		\$ 6,000
TOTAL GRANT AMOUNT		\$ 126,000.00

6. By deleting Attachment E (Business Partner Agreement) beginning on pages 7 of 22 and substituting in lieu thereof Attachment E, which is included as an attachment beginning on page 5 of 13.

This amendment consists of 14 pages. Except as modified by this amendment and any previous amendments, all provisions of this grant, (#03410-1145-14) dated **July 3, 2013** shall remain unchanged and in full force and effect.

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

SUBRECIPIENT

LAKE CHAMPLAIN LIFELONG LEARNING FUND

MARK LARSON, COMMISSIONER

DATE

CATHERINE Z. DAVIS

DATE

312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Mark.Larson@state.vt.us

60 Main Street, Suite 100
Burlington, VT 05401
Phone: 802-863-3489 x206
Email: Cathy@vermont.org

Attachment E
BUSINESS PARTNER AGREEMENT

THIS BUSINESS PARTNER AGREEMENT (“AGREEMENT”) IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT, AGENCY OF HUMAN SERVICES OPERATING BY AND THROUGH ITS DEPARTMENT OF VERMONT HEALTH ACCESS (“DVHA”) AND LAKE CHAMPLAIN LIFELONG LEARNING FUND (“BUSINESS PARTNER”) AS OF MARCH 21, 2014 (“EFFECTIVE DATE”). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE GRANT TO WHICH IT IS ATTACHED.

DVHA and Business Partner (“the Parties”) agree to comply with the terms of this Agreement and the standards promulgated under the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act (Public Law 111-152), and referred to collectively as the Affordable Care Act (ACA), and 45 CFR §155.260, “Privacy and security of personally identifiable information.” Business Partner information that constitutes protected health information (PHI) may have additional standards to which the Business Partner must adhere, which would be set out in a separate agreement.

1. **Definitions** All capitalized terms in this Agreement have the meanings identified in this Agreement and 45 CFR Part 155, “Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act.”
 - 1.1 The term “**Services**” includes all work performed by the Business Partner for or on behalf of DVHA that requires the access, collection, use and/or disclosure of personally identifiable information (PII).
 - 1.2 The term “**PII**” refers to personally identifiable information in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name.
 - 1.3 The term “**Minimum Functions**” includes all work performed (or Granted to be performed) pursuant to subparts D, E, H, and K of 45 CFR 155, if such work requires the Business Partner to create, collect, use, or disclose PII.
 - 1.4 The term “**Agreement**” refers to this Business Partner Agreement, which details the privacy and security requirements that the Parties must adhere to.
 - 1.5 The term “**Individual**” includes applicants, enrollees, and qualified individuals applying for coverage at the Vermont Health Insurance Exchange or Medicaid Agency.
 - 1.6 The term “**Breach**” means the loss of control, compromise, and unauthorized disclosure, acquisition, access, or use, and any similar term referring to situations where: (a) PII is used for an unauthorized purpose, or (b) persons other than authorized users have access or potential access to PII.
2. **Authorized Uses/Disclosures of PII**

- 2.1 Except as limited in this Agreement, Business Partner may only create, collect, use or disclose PII to the extent necessary to perform Services specified in the underlying Grant with DVHA. In the course of providing Services, Business Partner shall not use or disclose PII in any manner that would constitute a violation of 45 CFR §155.260 if used or disclosed by DVHA.
 - 2.2 Business Partner may make PII available to its employees who need access to perform Services and/or Minimum Functions, provided that Business Partner makes such employees aware of the creation, collection, use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Partner must also require workforce compliance with 45 CFR §155.260 when employees create, collect, use, or disclose PII in the course of providing Services
3. **Privacy Requirements** Uses and disclosures of PII to carry out the Services identified in the Grant must be of the minimum amount of PII necessary to perform the services. Business Partner may not create, collect, use or disclose PII gathered for the purposes listed in 45 CFR §155.260(a)(1) while performing Minimum Functions unless the creation, collection, use or disclosure is consistent with the written policies and procedures identified by the State in accordance with 45 CFR §155.260. In addition, Business Partner must ensure workforce compliance with these policies and procedures
4. **Security Safeguard Requirements**

Business Partner shall implement and use appropriate safeguards to prevent the use or disclosure of PII except as provided for by this Agreement, an Interconnection Security Agreement, if applicable, and as set forth in 45 CFR 155.260(a)(3)(vii) and (4).
5. **Documenting and Reporting Breaches**

Business Partner shall report to DVHA any Breach of PII as soon as it (or any of its employees or agents) becomes aware of such Breach, and in no case later than one (1) hour after it (or any of its employees or agents) become aware of the Breach. If DVHA determines that a Breach of PII occurred for which one of Business Partner's employees or agents was responsible, upon its request, Business Partner shall provide notice to the individual(s) whose PII was the subject of the Breach. When requested to provide notice, Business Partner shall consult with DVHA about the timeliness, content and method of notice, and shall receive DVHA's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Partner. Business Partner shall also be responsible for any reporting as required by 9 V.S.A. § 2435.
6. **Mitigation and Corrective Action Requirements** Business Partner shall mitigate, to the extent practicable, any harmful effect that is known to it of a Breach of PII. Business Partner shall draft and carry out a plan of corrective action to address any incident of impermissible collection, use or disclosure of PII, subject to DVHA's prior review and written approval.

7. **Requirements for Agreements with Third Parties** Business Partner may only disclose PII to its agents, including subgrantees, for the purposes authorized by this Agreement. Business Partner shall ensure that any agent (including any subgrantee) to whom it provides PII received from DVHA or created or received by Business Partner on behalf of DVHA agrees in a written agreement to the same PII restrictions and conditions that apply through this Agreement to Business Partner. Business Partner must enter into the written agreement and obtain the prior written consent of DVHA before any use or disclosure of PII to such agent. The written agreement must identify DVHA as a direct and intended third party beneficiary with the right to enforce any Breach of the agreement concerning the use or disclosure of PII. Business Partner shall provide a copy of the signed agreement to DVHA upon request.

8. **Termination**

- 8.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by DVHA or until all of the PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA is destroyed or returned to DVHA subject to Section 9.
- 8.2 If Business Partner breaches any material term of this Agreement, DVHA, without liability or penalty, may either: (a) provide in writing an opportunity and time frame for Business Partner to cure the breach and terminate the Grant if Business Partner fails to cure; or (b) immediately terminate the Grant if DVHA believes that cure is not reasonably possible. DVHA has the right to seek to cure any breach by Business Partner and this right, regardless of whether DVHA cures such breach, does not lessen any right or remedy available to DVHA at law, in equity, or under the Grant, nor does it lessen Business Partner's responsibility for such breach or its duty to cure such breach.

9. **Responsibility for the Return/Destruction of PII**

- 9.1 Business Partner, in connection with the expiration or termination of the Grant, shall return or destroy, at the discretion of DVHA, all PII received from DVHA or created or received by Business Partner on behalf of DVHA pursuant to the Grant that Business Partner still maintains within thirty (30) days after such expiration or termination. Business Partner shall not retain any copies of the PII. Within the thirty (30) day period, Business Partner shall certify in writing to DVHA that (1) all PII has been returned or destroyed, and (2) Business Partner does not continue to maintain any PII.
- 9.2 Business Partner shall provide to DVHA notification of any conditions that Business Partner believes make the return or destruction of PII infeasible. If DVHA agrees that return or destruction is infeasible, Business Partner shall extend the protections of this Agreement to such PII and limit further uses and disclosures of such PII to those conditions that make the return or destruction infeasible for so long as Business Partner maintains such PII.

10. **Penalties** Business Partner understands that it may be subject to a civil penalty, in addition to other penalties that may be prescribed by law, resulting from the improper creation, collection, use or disclosure of PII. In addition, violations of this Agreement may result in notification by DVHA to law enforcement officials and regulatory, accreditation, and licensure organizations.

11. **Training** Business Partner shall participate in training regarding the use, confidentiality, and security of PII at DVHA's request.

12. **Miscellaneous**

12.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Grant continue in effect.

12.2 Business Partner shall cooperate with DVHA to amend this Agreement from time to time as is necessary for DVHA to comply with 45 CFR §155.260 or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.

12.3 Any ambiguity in this Agreement shall be resolved to permit DVHA to comply with 45 CFR §155.260, or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.

12.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., the ACA) in construing the meaning and effect of this Agreement.

12.5 As between Business Partner and DVHA, DVHA owns all PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA.

12.6 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement.

The following provisions apply only to those Business Partners that will be accessing Federal Tax Information (FTI).

As applicable, DVHA and Business Partner ("the Parties") agree to comply with the terms of this Agreement and the Language for General Services and Technology Services pursuant to IRS Publication 1075, Exhibit 7:

13. General Services; Performance In performance of this contract, the Grantee agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

13.1 All work will be performed under the supervision of the grantee or the grantee's responsible employees.

13.2 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Grant. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Grant. Inspection by or disclosure to anyone other than an officer or employee of the grantee is prohibited.

13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

13.4 No work involving returns and return information furnished under this contract will be available shall be used only for the purpose of carrying out the provisions of this Grant. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Grant. Inspection by or disclosure to anyone other than an officer or employee of the grantee is prohibited.

13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and
after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

13.4 No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

13.5 The grantee will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

13.6 The agency will have the right to void the Grant if the grantee fails to provide the safeguards described above.

14. General Services; Criminal/Civil Sanctions

14.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

14.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

14.3 Additionally, it is incumbent upon the grantee to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to grantees by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a grantee, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any

manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

14.4 Granting a grantee access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Grantees must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, grantees should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the grantee should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

15. **General Services; Inspection** The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the grantee for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the grantee is found to be noncompliant with contract safeguards.

16. **Technology Services; Performance** In performance of this contract, the grantee agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

16.1 All work will be done under the supervision of the grantee or the grantee's employees.

16.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the grantee will be prohibited.

16.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

16.4 The grantee certifies that the data processed during the performance of this contract will be completely

purged from all data storage components of his or her computer facility and no output will be retained by the grantee at the time the work is completed. If immediate purging of all data storage components is not possible, the grantee certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

16.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the grantee will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

16.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

16.7 No work involving FTI furnished under this contract will be subcontracted without prior written approval of the IRS.

17. Technology Services; Criminal/Civil Sanctions

17.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

17.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an

amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

17.3 Additionally, it is incumbent upon the grantee to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to grantees by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a grantee, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

17.4 Granting a grantee access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Grantees must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, grantees should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the grantee should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

18. **Technology Services; Inspection** The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the grantee for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the grantee is found to be noncompliant with contract safeguards.

(Rev:11/15/13)